IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 95 of 2001

(Old No. 6724/1991)

Date of decision:- 03/05/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 03/5/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 95 of 2001
(Old No. 6724/1991)

Ravindra Nath Vashistha
S/o Sri Mahendra Nath Partner
Vashishta Construction Company,
125 Devi Nagar Surajkund Road,
Meerut (U.P.) .....applicant

Versus

1. State of Uttaranchal
2. Ajay Kumar Garg
   S/o Sri Satyapal Garg
   R/o 494 Western Amber Talab Roorkee
   Police Station – Ganghahar,
   District – Haridwar .....Respondents

Shri Navneet Kaushik, learned counsel for the applicant.
Shri Amit Bhatt and Shri Nandan Arya, learned A.G.A. for the State.
Shri Rajendra Singh, learned counsel for the respondent No. 2

Hon'ble J.C.S. Rawat, J.

1. This petition u/s 482 Cr.P.C. has been filed to quash the criminal complaint and entire proceedings in Criminal Case No. 729 of 1990 Ajay Kumar Garg Vs. Ravindra Nath Vashistha pending in the court of A.C.J.M. Roorkee, Hardwar.

2. Brief facts for the disposal of this case are that a complaint bearing No. 1642 of 1990 was filed wherein it was alleged that a cheque was given by the applicant bearing the name of Satya Pal to the respondent No. 2 and that cheque was dishonoured. Thereafter, complaint was filed before the court below u/s 406 and 420 I.P.C. The Magistrate took the cognizance of the said case on 14.06.1990 u/s 420 and 406 I.P.C. and thereafter the case was registered for hearing on 26.06.1990. On that date, the complainant did not appear before the court and the complaint was dismissed. The complainant-respondent No. 2 filed second complaint before the court below on 26.06.1990 on the same allegations before the court

below. It was registered as Criminal Case No. 729 of 1990. The court directed to list it on 16.087.1990 for the evidence of the complainant u/s 200 and 202 Cr.P.C. Meanwhile, the order of dismissal for non-prosecution passed by the learned Magistrate was challenged before the Sessions Judge. The learned Sessions Judge vide its order dated 31st July, 1990 allowed the revision and the impugned order dated 26.06.1990 was set aside and the record was sent back to the court below to proceed further with the case and to dispose of the case in accordance with the law.

3. Feeling aggrieved by the said order, the applicant preferred a revision before the Allahabad High Court and Allahabad High Court vide its order dated 21st December, 1992 allowed the revision on the ground that the revisionist was not given proper opportunity during the hearing of the revision as such the order was passed illegally and the revision was allowed. Meanwhile, the File No. 1642 was received before the learned Magistrate on 7th August, 1990 and the learned Magistrate instead of recording any order in Case No. 1642, he took it on the subsequent complaint filed on 26.06.1990 bearing No. 729 of 1990 and ordered to summon the accused. Perusal of the record reveals that no statement u/s 200 and 202 Cr.P.C. were recorded in the subsequent complaint which was ordered on 26.06.1990. Feeling aggrieved by the subsequent order passed on 07.08.1990, he preferred objection before the trial Magistrate. The trial Magistrate had disposed of the objection vide its order dated 1.12.1993 alleging therein that the first complaint which was dismissed in non-prosecution had been confirmed by the High Court and the subsequent complaint filed by the complainant was maintainable.

4. I have heard learned counsel for the parties and perused the record.

5. It was contended by the learned counsel for the applicant that the accused was summoned for the subsequent complaint bearing No. 729 of 1990 by the A.C.J.M. without recording the statement u/s 200 and 202 Cr.P.C. It was contended on behalf of the learned counsel for the applicant that the summoning order was passed on the basis of the order passed by the learned Magistrate which has been rescinded by the High Court. Perusal of the record reveals that the Magistrate have ordered on 26.06.1990 to record the statement u/s 200 and 202 Cr.P.C. but the statement was not recorded as directed by him. Due to some confusion he had taken the file of 1642 of 1990 in the present case and he summoned straightway to the accused on the basis of the order of the learned Sessions Judge, Haridwar. The order of the learned Sessions Judge had already been rescinded by the High Court. It is also pertinent to mention here that there are three conditions provided u/s 249 Cr.P.C. Firstly the proceeding must have been instituted upon a complaint, secondly that the complainant has failed to appear and thirdly the offence to which the complaint pertains can be lawfully compounded or is not cognizable by the police. If these conditions are fulfilled, the learned Magistrate has the power to discharge the accused u/s 249 Cr.P.C. If the offence is cognizable and it is warrant trial, second complaint is permissible if it is filed within the limitation provided under the provision of the Cr.P.C. While taking the second complaint, the learned Magistrate should have proceeded in accordance with the provisions of Section 200 and 202 Cr.P.C. In this case, the Magistrate had not recorded the statement u/s 200 and 202 Cr.P.C. as such the order is bad in law and the order is liable to be quashed. The learned Magistrate will also consider the order of the Allahabad High Court passing the appropriate order after recording the statement u/s 200 and 202 Cr.P.C.

6. In view of the foregoing discussion I am of the view that the order of summoning passed by the Magistrate is liable to be set aside and is accordingly set aside. The case is reminded back with the observation that the Magistrate shall proceed under Chapter XV of the Cr.P.C. and thereafter pass the appropriate order in light of the observation made in the judgment.

7. The petition is disposed of accordingly.

8. All applications pending in this case are stand disposed of in terms of the judgment.

(J. C. S. Rawat, J.)

3rd May, 2006
Shiv